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10 | Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

14 SANTA YNEZ VALLEY UNION
15 HIGH SCHOOL DISTRICT, a political
subdivision of the State of California;

Case No. 17-cv-1214

16 Plaintiff,

17 | VS.

18 FIELDTURF USA, INC., a Florida
19 corporation; FIELDTURF, INC., a
Canadian corporation; FIELDTURF
TARKETT SAS, a French corporation,

Defendants.

1. BREACH OF THIRD PARTY BENEFICIARY CONTRACT;
 2. BREACH OF IMPLIED WARRANTY;
 3. VIOLATION OF THE UNFAIR COMPETITION LAW (BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.*);
 4. VIOLATION OF THE FALSE ADVERTISING LAW (BUSINESS & PROFESSIONS CODE § 17500, *ET SEQ.*);
 5. FRAUDULENT CONCEALMENT;
 6. DECLARATORY RELIEF;
 7. BREACH OF EXPRESS WARRANTY

DEMAND FOR A JURY TRIAL

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1 COMES NOW, Plaintiff, SANTA YNEZ VALLEY UNION HIGH SCHOOL
 2 DISTRICT, a political subdivision of the State of California (hereinafter the
 3 "District"), by its undersigned attorneys, and alleges the following based upon
 4 personal knowledge as to itself and its own acts, and information and belief as to all
 5 other matters based upon its investigation conducted by and through its attorneys,
 6 which include, among other things, review and analysis of the court filings,
 7 websites, and investigative journalist reports. Plaintiff believes that substantial
 8 evidentiary support will exist for the allegations set forth herein after reasonable
 9 opportunity for discovery.

10 **INTRODUCTION**

11 1. This action involves the deceptive and unfair business practices of
 12 FieldTurf in connection with its manufacturing, marketing, sale and installation of a
 13 defective artificial turf sports field installed in September of 2006 at Santa Ynez
 14 Valley Union High School, located at 2975 East Hwy 246, Santa Ynez, California
 15 (hereinafter "SYHS"). Between 2005 and 2012, FieldTurf sold and installed
 16 approximately 1,700 artificial turf fields throughout the United States, which
 17 generated reported revenues of \$570,000,000. Unfortunately for its customers, the
 18 fibers that FieldTurf used to make its artificial turf was defective – and FieldTurf
 19 knew it. Despite this knowledge, FieldTurf continued to aggressively market and
 20 advertise the benefits of its defective product, and even replaced and repaired fields
 21 which had prematurely deteriorated with the same defective product.

22 2. In 2011, FieldTurf sued its supplier of the artificial fibers, TenCate
 23 Thiolon Middle East, LLC. ("TenCate") for fraudulent inducement of contract,
 24 breach of contract and breach of warranty alleging that the turf fibers supplied to
 25 FieldTurf were defectively manufactured without "an adequate amount of ultraviolet
 26 (UV) stabilizers required to prevent loss of tensile strength, increasing its premature
 27 disintegration during the warranty period." In that lawsuit, FieldTurf admitted that it
 28 had "built more than 100 fields using defective fibers that are degrading

1 prematurely." FieldTurf sought relief because it faced "pending and future claims of
 2 tens of millions of dollars as a result of failures of [the] supplied fiber." FieldTurf
 3 settled its \$30 million lawsuit against TenCate in 2014 for a confidential amount,
 4 but failed to inform its customers, including Plaintiff herein, of its knowledge that it
 5 had installed defective fibers in Plaintiff's artificial turf sports field. Instead,
 6 FieldTurf pocketed the settlement and kept Plaintiff and the rest of its customers in
 7 the dark and on their own to deal with the cost of replacing their deteriorating fields.

THE PARTIES

9 3. Plaintiff is now, and at all times mentioned herein was, a public school
 10 district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the
 11 *California Education Code* and is thus a political subdivision of the State of
 12 California. The District is the legal owner of the real property where FieldTurf
 13 installed its artificial turf sports field at SYHS. As such, the District is the current
 14 owner of the defective field installed by FieldTurf and is responsible for its
 15 maintenance and repair.

16 4. Defendant, FIELDTURF USA, INC. ("FieldTurf"), is a Florida
 17 corporation with its principal place of business in Calhoun, Georgia, doing business
 18 in California and elsewhere in the United States. FieldTurf sold and installed the
 19 artificial turf field at SYHS which is the subject matter of this action. Plaintiff is
 20 further informed and believes, and thereon alleges, that FieldTurf manufactured the
 21 artificial turf field installed at SYHS at its Calhoun, Georgia plant.

22 5. Defendant, FIELDTURF, INC. ("FTI"), is a Canadian corporation, and
 23 sister corporation of FieldTurf. Plaintiff is further informed and believes, and
 24 thereon alleges, that Defendant, FTI may be the manufacturer of the artificial turf
 25 fields installed at SYHS.

26 6. Defendant, FIELDTURF TARKETT SAS ("FTS"), is a French
 27 corporation, and the parent corporation of both FieldTurf and FTI, and thus, liable
 28 for the actions of both FieldTurf and FTI. Plaintiff is further informed and believes,

1 and thereon alleges, that Defendant, FTS may be the manufacturer of the artificial
 2 turf fields installed at SYHS.

3 7. Defendants, FieldTurf, FTI and FTS are collectively referred to herein
 4 as "FieldTurf." FieldTurf manufactures and installs artificial turf sports fields, and
 5 claims that it has completed more than 2,500 such installations throughout the world.

JURISDICTION AND VENUE

7 8. This Court has original and/or supplemental subject matter jurisdiction
 8 over all claims in this action pursuant to 28 U.S.C. §§ 1332 and 1337. Diversity
 9 jurisdiction exists because this is a dispute between citizens of different states and in
 10 which citizens of foreign states are additional parties. The amount in controversy,
 11 exclusive of interest and costs, well exceeds \$75,000.

12 9. This Court has personal jurisdiction over the parties in this action by
 13 the fact that Defendants are corporations that are authorized to conduct business in
 14 California and have intentionally availed themselves of the laws and markets of
 15 California through the promotion, marketing, distribution and sale of its artificial
 16 turf products to high schools, colleges, universities and municipalities in California,
 17 including Plaintiff herein. Defendants sold and installed the defective artificial turf
 18 field at SYHS in the County of Santa Barbara, State of California.

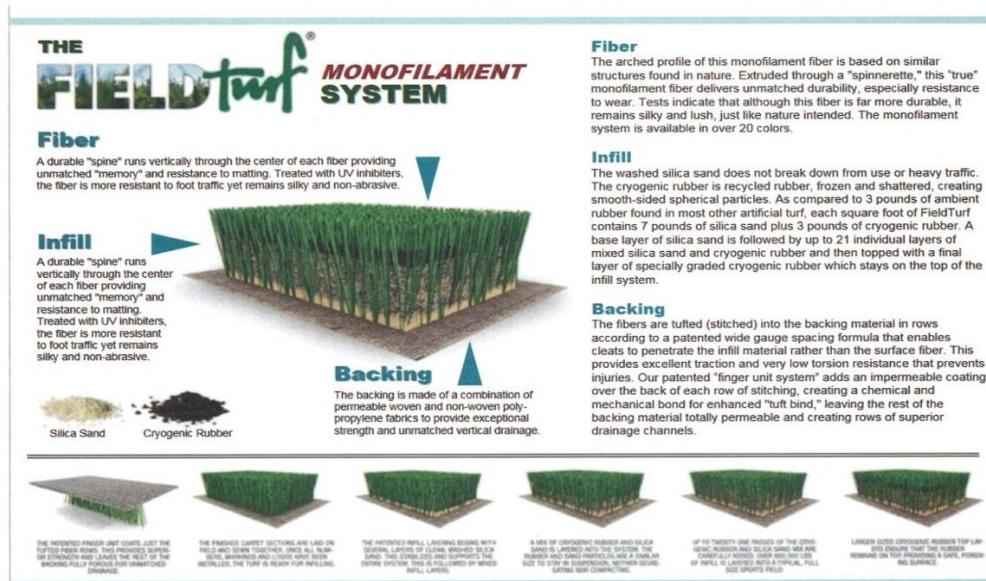
19 10. Venue is proper in this District pursuant to 28 U.S.C. §1331(b),
 20 because a substantial part of the events or omissions giving rise to the Plaintiff's
 21 claims occurred in this District. Venue is also proper under 18 U.S.C. §1965(a),
 22 because Defendants transacted a substantial amount of its business in this District.

STATEMENT OF FACTS

A. FieldTurf And Its Artificial Turf Product:

25 11. According to its website (www.fieldturf.com) FieldTurf is recognized
 26 as the market leader globally in synthetic sports fields. FieldTurf boasts that 21 out
 27 of the 32 National Football League teams have selected FieldTurf installations for
 28 their stadiums and/or practice fields.

1 12. The main components of each FieldTurf field are artificial
 2 monofilament grass fibers, a permeable fabric backing into which the fibers are
 3 stitched or "tufted", and a mixture of sand and rubber granules that serve as the
 4 "infill" between the fibers.



15 13. FieldTurf obtained the artificial fibers for the turf field it installed at
 16 SYHS from TenCate. These fibers were marketed by Tencate under the brand name
 17 "Evolution" and manufactured at Tencate's facility in Dubai, United Arab Emirates.
 18 At all relevant times, FieldTurf marketed the turf which used the artificial Evolution
 19 grass fibers under the brand name "Duraspine" (the "Defective Product").

20 14. Commencing in 2005, FieldTurf embarked upon an aggressive
 21 marketing campaign to promote its new Duraspine monofilament artificial grass
 22 turf, which was more expensive than traditional slit film fiber fields sold by its
 23 competitors. As part of its marketing campaign, FieldTurf made the following
 24 representations in a marketing brochure:

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10 Reasons Why FieldTurf
And Its MonoGrass System
Should be Selected

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1. MONOFILAMENT FIBERS—DURABILITY AND VALUE

In the last few years, FieldTurf has focused on new products that have all the best attributes of traditional PE slit film yarns, with the added *durability* that is only possible with the monofilament production process. FieldTurf's efforts have resulted in a patented fiber unavailable to any other company.

FieldTurf's new "DuraSpine" MONOFILAMENT fiber offers INCREASED PRODUCT LIFE. Comparative wear testing shows a wide gap in wear resistance between standard, proven slit film fibers (including FieldTurf's own slit film, which has a proven 8-10 year life cycle) and this new generation of "true" monofilament. Although at this point it is impossible to correlate this additional toughness to a set period of extended product life, the fact remains that the new FieldTurf system will last longer.

And the longer a product lasts, the more economical it is from a life cycle standpoint! Buying FieldTurf with the new MONOFILAMENT, regardless of initial price, is a BETTER VALUE.

This added longevity will actually allow the District to amortize the life of the field on a 10+ year basis rather than the 8+ year life expectancy. This represents a much greater return on investment than the older slit film products currently being installed by most companies in the market. FieldTurf has in place over 40 MONOFILAMENT applications in North America, including fields at the NCAA Division I level. No other company has this kind of fiber or such proven fields in place.

2. MONOFILAMENT FIBERS—PLAYABILITY AND AESTHETICS

FieldTurf's new-generation monofilament system is the closest thing yet to a grass-like surface.

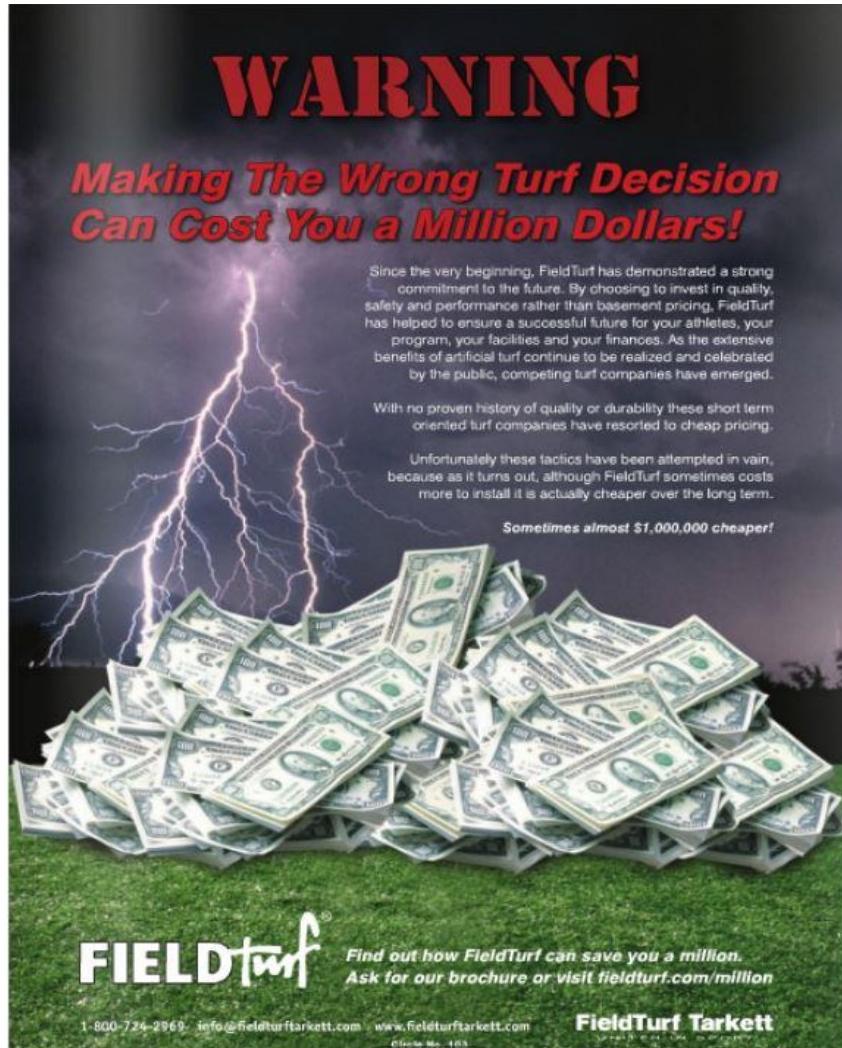
- The fibers have excellent "memory" so they remain looking like new grass—erect fibers, not a matted carpet.
- The erect fibers offer "resistance" to soccer balls, making the system more grass-like—the ball rolls and plays exactly like it does on grass according to FIFA testing--and thus is more useful for soccer players.
- The fibers, though more durable, are quite soft, which will virtually eliminate skin abrasions.

3. COMPLETE PRODUCT QUALITY CONTROL

15. In another marketing handout, FieldTurf claimed that "DuraSpine fiber is far more resistant to UV and foot traffic", "this spine gives each fiber unmatched 'memory' and thus resistance to matting" and "Tests indicate the DuraSpine fiber is far more resistant to UV and foot traffic, the two main enemies of any turf system."

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1 16. FieldTurf aggressively marketed the financial advantages of its product
 2 based upon its represented longevity:



20 B. **FieldTurf Knew Evolution Fibers Were Defective:**

21 17. FieldTurf knew that its representations about the durability and
 22 longevity of its Defective Product were false and likely to deceive its customers,
 23 including Plaintiff herein, based upon its knowledge of the Evolution fibers' failures
 24 beginning as early as 2006.

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4 From: Kenny Gilman
5 Sent: Monday, February 27, 2006 10:20 AM
6 To: Jim Petrucci
7 Cc: Darren Gill; John Gilman; Troy Squires
8 Subject: RE: Torrey Pines
9 Attach: Westview HS Jan. 19 2006.doc; _0119171609_001.pdf

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11 Jim,
12 Scope attached for same repair at Westview HS. Total cost about 100k including all materials and labor.

13 Kenny

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15 -----Original Message-----

16 From: Jim Petrucci
17 Sent: Monday, February 27, 2006 12:40 AM
18 To: Kevin Reynolds; Kenny Gilman; Troy Squires; Sportech; Jim; John Gilman
19 Cc: Darren Gill; 'tcfieldturf@cox.net'
Subject: RE: Torrey Pines

20 Kevin & Kenny,

21 What is the current thought process as to how we correct these problems and what is causing the failure???. who is taking
the point and resolving the failure and how quickly can we get it done??. I understand that there are other similar failures...
22 Jim M & Tim Coury need to identify all the existing problems as well as any potentials... Sprint will try everything to
exploit this field... Darren needs to be involved and cover the marketing with a proactive public response and spin...
23

24

25 -----Original Message-----

26 From: Tim Coury [mailto:tcfieldturf@cox.net]
27 Sent: Sunday, February 26, 2006 2:00 PM
28 To: Kevin Reynolds; Kenny Gilman; Jim Petrucci; Troy Squires; Sportech; Jim; Sportech; Steve; John Gilman
Subject: Torrey Pines
Importance: High

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30 I met Mike Mirante (FieldCare West) today while he swept Torrey Pines High. The lite green panels have failed like all the
other alt green fields in S. Calif. This field is 2 years old and the lite green fiber looks 6 years old. Torrey Pines is the sister
31 school to La Costa Canyon High. La Costa will install a field and track this summer and will decide between us and Sprint
32 very soon. The Torrey field is killing our chances of getting the La Costa order. Sprint is bringing everyone to the Torrey
33 field and saying it is proof that the FT fiber doesn't last. We better do something to correct this or S Cal will suffer. No
question.

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60 18. Further, in an angry email to FieldTurf's founder, John Gilman, dated
61 May 12, 2006, the president of Sportexe, Inc., a general contractor which installed
62 FieldTurf's Duraspine at high schools and colleges throughout Southern California,
63 said, "...it does not look good to prospects and clients, spinning it, that its normal
64 for the fiber to fall out of the field....Right now, on our [name of field redacted] in
65 So Cal. before we take prospects there we have to get FieldTurf Builders there to

1 sweep the fiber that is how bad it is. Donny has a new field north of Seattle and
 2 before he shows prospects he has to arrive early and pick up the fiber everywhere...I
 3 would rather lose this selling advantage than have to try to explain why our fiber is
 4 so easily pulled out of our fields."

5 19. In response to these alarming reports, John Gilman emailed Jeroen van
 6 Balen, then the Managing Director of Mattex Leisure Industries (the original
 7 manufacturer of the Evolution fibers and predecessor of TenCate) on December 28,
 8 2006, "We are seeing fields showing splitting after under a year of play and have
 9 already had to replace one full-sized field due to yarn failure after only a few
 10 months of installation!" In response, van Balen wrote an email back to Gilman
 11 reiterating that the monofilament fiber sold to FieldTurf was "excellent". However,
 12 John Gilman responded on December 30, 2006, "Telling me the technology is
 13 excellent means nothing. Now we know with heavy use, the fiber is coming apart.
 14 What do we do? If I write an official letter, it will have a material effect on the deal.
 15 The deal will explode in many directions. We'd better talk." On New Year's Eve of
 16 2006, John Gilman followed up with the ominous warning, "It's all about that old
 17 story of waiting for the next shoe to drop. We have had a few failures as you know.
 18 The question is...will many others fail? Who knows?"

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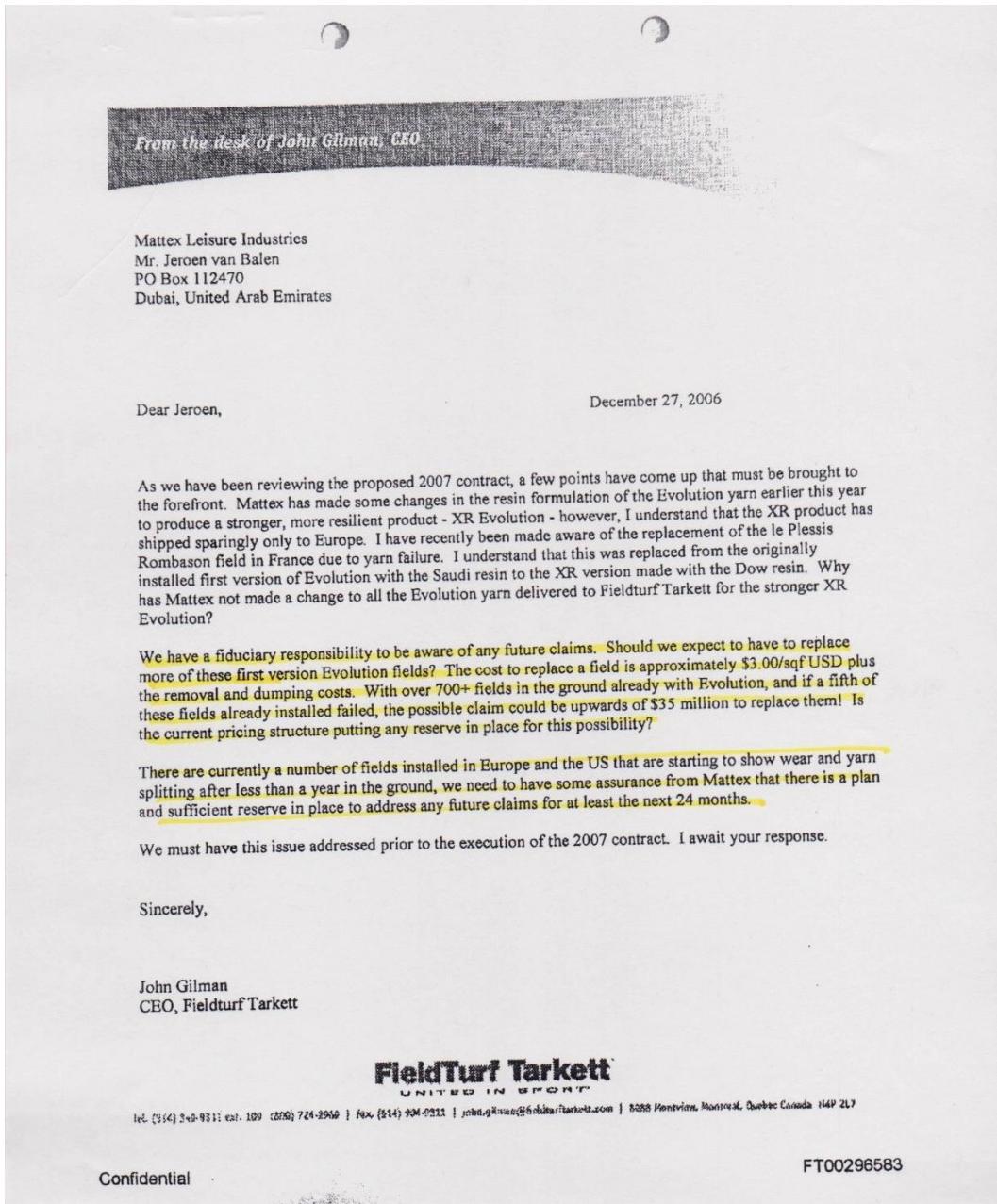
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1 20. On or about December 27, 2006, John Gilman prepared the following
2 letter to Jeroen van Balen¹:



28 1 Obtained from public domain from article published by NJ Advance Media,
The 100-Yard Deception at wbur.org

1 21. On November 9, 2007, an internal email Kenny Gilman, the Executive
2 Director of FieldTurf, told Kevin Reynolds, Vice President of FieldTurf's
3 Operations, and David Moszkowski, Chief Financial Officer and Interim CEO after
4 John Gilman's death:

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From: Kenny Gilman <kgilman@fieldturf.com>
Sent: Friday, November 9, 2007 10:03 AM
To: Kevin Reynolds <Kevin.Reynolds@fieldturftarkett.com>; David Moszkowski <David.Moszkowski@fieldturftarkett.com>
Subject: Directives from legal department to salespeople and marketing department

David / Kevin

As you know our sales and marketing guys continually make claims that we can't possibly meet in the real world. This opens us up to tons of exposure from a legal standpoint. For example drainage claims by our salespeople currently have blown up in our face and there's pending lawsuits and 100's of thousands in holdbacks outstanding due to the fact that the fields can't possibly drain as fast as the sales guy's claim they will. On the marketing side the claims made regarding the Duraspans and Hard / Soft fiber are ridiculous. Everyday we are putting stuff out there that can't and won't live up to the marketing spin. We have to control this somehow!!!

Thanks
Kenny

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24 22. In his deposition in the Tencate Action, Kenny Gilman testified that he
25 knew and objected to "many marketing and selling tactics" made by FieldTurf's
26 sales force, including the ads and representations that FieldTurf used ten pounds per
27 square foot of infill on every field, which Mr. Gilman admitted was a false
28 representation.

1 23. In July 2007 after his father's death, Ken Gilman arranged a trip to New
2 Jersey to educate FieldTurf's interim CEO, David Moszkowski, about the problems
3 with the Defective Products. Gilman summarized the results of this fact-finding trip
4 saying fields installed in 2005 and 2006 and subjected to only one or two years of
5 play were becoming matted. "This yarn is nowhere near as robust or resilient as we
6 initially thought and probably will not last that must longer than a high quality slit-
7 film yarn. In all likelihood in years 5 and 6 these Duraspine fields will be matted
8 down and fibrillating pretty heavily. Our marketing claims and sales pitches need to
9 reflect this reality."

10 24. Notwithstanding the knowledge that its product was defective,
11 FieldTurf failed to change its marketing and advertising claims for the Defective
12 Products.

13 25. As further evidence of FieldTurf's knowledge that it had sold defective
14 artificial turf fields to thousands of customers, including Plaintiff herein, on March
15 1, 2011, FieldTurf sued Tencate in United States District Court, *FieldTurf USA, Inc.*
16 *v. Tencate Thiolon Middle East, LLC*, Case No. 4:11-CV-50-TWT (N.D. Georgia)
17 ("Tencate Action"). In its lawsuit, FieldTurf accused Tencate, and its predecessor
18 Mattex, of a "bait-and-switch" scheme in which Mattex and later Tencate changed
19 its formula to make the Evolution fibers and also changed the manufacturing process
20 which resulted in a much less expensive, less durable fiber that also lacked an
21 adequate amount of ultraviolet ("UV") stabilizers required to prevent loss of tensile
22 strength, increasing the fiber's premature disintegration during the warranty period.
23 In the Tencate Action, FieldTurf's own expert concluded that the Evolution fibers
24 did not live up to its supplier's warranty that the fibers would retain more than 50%
25 of their tensile strength during their expected 10 year life and that those fields which
26 had not already failed would likely fail in the future.

27 26. Further, internal emails between Denise Mireault, FieldTurf's Director
28 of Customer Service, and FieldTurf executives in November and December of 2009,

1 reveal discussions about the list of "bad" Duraspine fields which were failing at that
2 time, including Baker University in Kansas, Bishop Verot High School in Florida,
3 and Midlothian High School in Texas. Significantly, these internal emails stated that
4 the Duraspine turf which had been installed at SYHS came from the same
5 production lots of turf which had been installed and were failing at Bishop Verot
6 and Midlothian High Schools. Thus, as of December 2009, FieldTurf executives
7 knew that the Duraspine turf installed at SYHS came from the same production lots
8 of turf which were failing at others schools across the country. At no time did
9 FieldTurf ever inform Plaintiff of these material facts before, during or after
10 Plaintiff made complaints to FieldTurf about its failing field.

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From: Bearden, Derek <Derek.Bearden@fieldturftarkett.com>
Sent: Monday, December 7, 2009 8:31 AM
To: Slaughter, Janice <Janice.Slaughter@fieldturftarkett.com>
Subject: FW: Fabric/Yarn Info OnSummer Green

14

Janice,

15 Below are some fields (you may already have some of these) that have the same dye lots of yarns we've seen issues with.
We should try to find at least one of each color/dye lot and put it in the QUV to see what happens.

Derek

16

From: Bennett, Jennifer
Sent: Saturday, December 05, 2009 3:41 PM
To: Bearden, Derek; Mireault, Denise
Cc: Waters, Brian
Subject: RE: Fabric/Yarn Info OnSummer Green
Importance: High

17

Hi Derek,

18 Here are a handful of fields that used the same lots of Summer Green DL 205WR1A1 (same as Baker U):

- Central College SO# 56491 - 5/2006
- James Madison University SO# 56385 - 6/2006
- West Chester University SO# 56706 - 07/2006
- New Fairfield HS SO# 56710 - 7/2006
- Bishop Sullivan SO# 56877 - 8/2006
- Riverside Brookfield HS SO# 56805 - 8/2006

19

Summer Green DL 205WR2A1 (same as Midlothian and Bishop Verot):

- City of Fontana SO# 56270 - 4/2006
- Pittsburg HS SO# 56360 - 4/2006
- Dwight Englewood School SO# 56347 - 4/2006
- Ygnacio Valley HS SO# 55780 - 5/2006
- Raritan HS SO# 56442 - 5/2006
- Wagner College SO# 56812 - 7/2006
- Santa Ynez HS SO# 56805 - 8/2006
- Riverside Brookfield HS SO# 56805 - 8/2006
- Mahwah HS SO# 56791 - 8/2006
- Wat Memorial HS (New Jersey) SO# 57003 - 9/2006
- Monterey Peninsula College SO# 56834 - 9/2006

20

Here are a handful of fields that used Fieldgreen DL 206WR5A14 (same as Midlothian):

- Goose Creek ISD SO# unknown (job # GCREEK) 4/2006
- Missouri State University SO# 56276 - 4/2006
- Pittsburg HS SO# 56360 - 4/2006
- City of Fontana #5 SO# 56270 - 5/2006
- Corsicana ISD SO# 56460 - 5/2006 (Denise - isn't this the one on our current list to?)
- Raritan HS SO# 56442 - 5/2006
- Catholic University of America - SO# 00076 - 5/2006

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1 27. Despite FieldTurf's knowledge that the Evolution fibers installed at
2 SYHS were defective, FieldTurf concealed this material information from Plaintiff,
3 and even used the same defective Evolution fibers to make repairs in 2010 and to
4 replace the entire field in 2012, without telling Plaintiff that FieldTurf was using the
5 defective turf to make those repairs or replacement.

6 28. FieldTurf's massive scheme to defraud consumers such as Plaintiff
7 herein was finally exposed in December 2016 by two investigative reporters at NJ
8 Advance Media after a six month long investigation, which included forty public
9 records requests, examining 5,000 pages of company records, emails, court filings in
10 the Tencate Action and interviewing dozens of coaches, officials and current and
11 former FieldTurf employees.

12 **C. SYHS Turf Field:**

13 29. In or about the Fall of 2005, Ken Fredrickson, the Athletic Director for
14 SYHS, met with Tim Coury, FieldTurf's Regional Sales Representative, to discuss
15 SYHS using FieldTurf's Duraspine turf product for its upcoming sports complex
16 project. FieldTurf was one of the companies which had expressed an interest in
17 submitting a bid to install the artificial turf field at SYHS's new sports complex.
18 During meetings with Mr. Fredrickson, Tim Coury told Mr. Fredrickson that the
19 Duraspine turf product had a useful life of 10+ years, and would last beyond the 8
20 year warranty period. Mr. Fredrickson and others at the District researched
21 FieldTurf's product and reviewed FieldTurf's marketing brochures concerning the
22 Duraspine turf product. Based upon these representations made by Tim Coury and
23 those contained in the marketing brochures provided to the District, the District
24 selected FieldTurf's Duraspine for the construction of its new sports complex.

25 30. On or about June of 2006, the District entered into a prime contract
26 with Granite Construction Company ("Granite") for the construction of certain
27 improvements at SYHS, including the Santa Ynez Union High School Sports
28 Complex Project (hereinafter the "Project").

1 31. On or about June 9, 2006, Granite entered into a subcontract with
2 FieldTurf USA, Inc. (hereinafter the "Granite Subcontract"), whereby FieldTurf
3 agreed to sell and install approximately 87,598 square feet of artificial turf sports
4 field for the Project using the Duraspine monofilament turf in exchange for payment
5 of \$544,836.40. In that subcontract, FieldTurf agreed to provide an 8 year, pre-paid,
6 third party insured warranty, permanent football markings (white turf), permanent
7 soccer markings (yellow turf), end zones and midfield logo among other items. In
8 the Granite Subcontract, FieldTurf warranted to the District that "all Work shall be
9 performed in a neat, skillful, good and workmanlike manner and shall be fit for its
10 intended use both as to workmanship and materials." Further, FieldTurf agreed to
11 assume all obligations, liabilities and responsibilities that Granite had assumed
12 toward the District in the prime contract. FieldTurf also agreed to indemnify the
13 District against all "claims, debts, demands, damages, consequential damages,
14 liabilities, interest, actual attorney's fees, costs and expenses of whatever kind or
15 nature" "in connection with or incident to the Work or arising out of any failure of
16 Subcontractor to perform any of the terms and conditions of this Subcontract...."
17 Finally, FieldTurf also agreed to name the District as an additional insured under its
18 comprehensive general liability insurance policy. A true and correct copy of this
19 Granite Subcontract is attached hereto as Exhibit "A". The Project was completed in
20 or about September of 2006.

21 32. In late 2009, SYHS noticed that the colored fibers which made up the
22 school's logo at centerfield and white and orange markings in the end zones was
23 failing. These failures included breaking, splitting and thinning of the individual
24 fibers characterized by fibrillation, fiber breakage and pile layover, just as FieldTurf
25 had described the Defective Product in its internal emails and in its Complaint in the
26 TenCate Action.

27 ///

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1 33. In or about late September 2009 (three years into the warranty period),
2 Ken Fredrickson reported the foregoing problems to Tim Coury at FieldTurf and
3 made a claim under the warranty to replace the entire field. In June of 2010,
4 FieldTurf only agreed to replace the turf in both end zones and the logo in the center
5 of the field, and refused to replace the rest of the field. At that time, FieldTurf
6 representatives told the District that the rest of the field did not need to be replaced.
7 FieldTurf concealed from Plaintiff that it knew the Duraspine product was defective
8 and had failed at other schools around the country. SYHS did not know of these
9 facts and relied upon FieldTurf's expertise to determine whether the entire field
10 needed to be replaced. At no time did FieldTurf ever inform Plaintiff or SYHS that
11 it knew that the Duraspine turf installed at SYHS in 2006 came from the same
12 production lots of turf which had failed at other schools across the country when it
13 refused to replace the entire field in 2010.

14 34. In or about May of 2011 in response to further complaints from SYHS
15 that the entire field was prematurely deteriorating, Tim Coury and Martin Olinger of
16 FieldTurf conducted a site inspection of the field at SYHS. During that inspection,
17 Coury and Olinger told Ken Fredrickson that while FieldTurf had experienced some
18 issues at other schools due to the defective Duraspine turf, FieldTurf would replace
19 SYHS's field with an improved version of Duraspine called "Duraspine Pro" at no
20 cost to the District. However, in a subsequent letter to SYHS, dated May 11, 2011,
21 Martin Olinger, Senior V.P. of Sales for FieldTurf, told SYHS that it had three
22 options for the replacement of the defective field.

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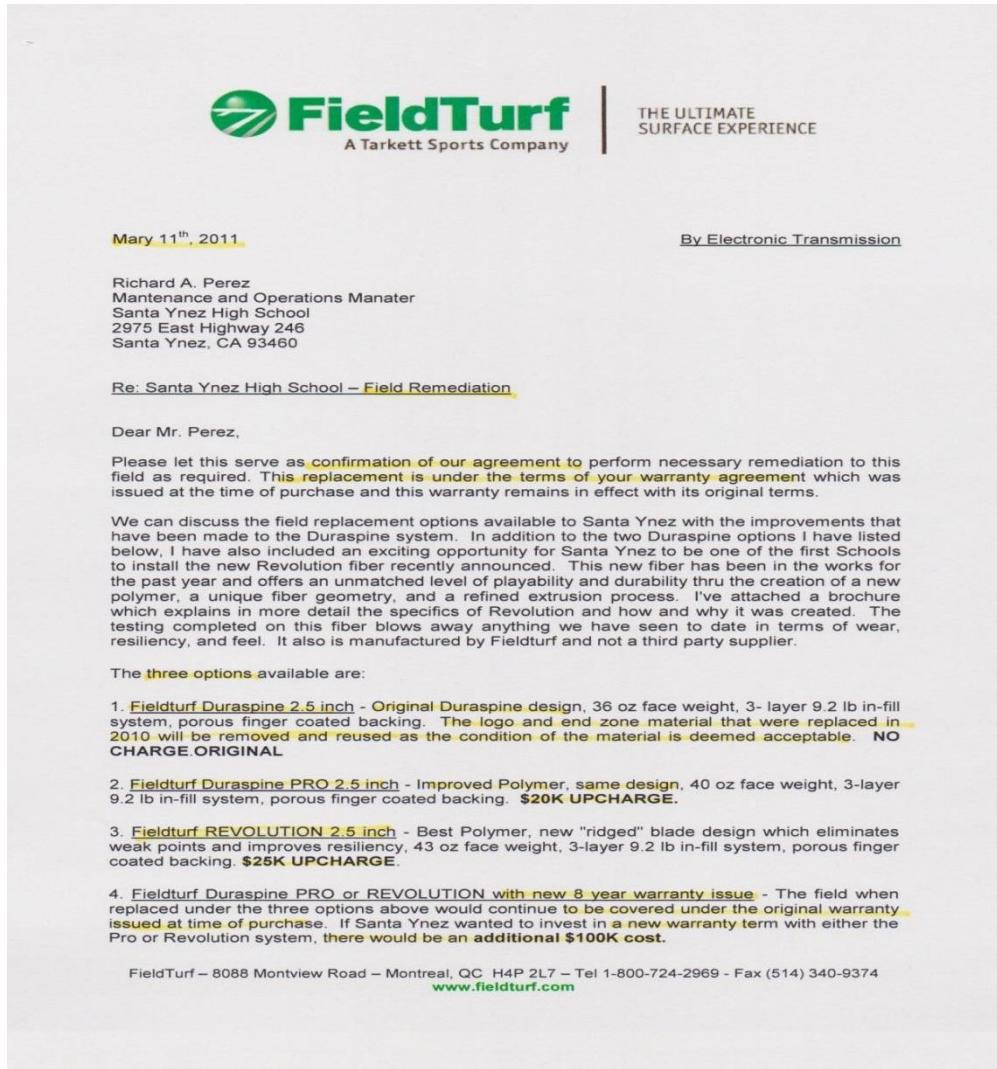
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35. On June 20, 2011, Mr. Olinger sent another letter to SYHS, which again changed FieldTurf's replacement offer and stated, "Based upon pending litigation with the manufacturer of the earlier version of Duraspine used on your current field, we must revise our previous offer and options for replacement...." This letter only offered to replace SYHS's defective field with either an improved version of the original Duraspine turf product, or replace it with "FieldTurf Revolution", which was FieldTurf's new proprietary turf product which it manufactured itself. The option to replace SYHS's defective field with the new Revolution product was offered at a "discounted" \$125,000 "upcharge" according to this letter. Again, FieldTurf did not disclose that the replacement Duraspine product was defective.



1 June 20, 2011
2

3 Nicole Evenson
4 Business Manager
5 Santa Ynez Valley Union High School District

6 Thank you for your continued patience as it relates to the field issues you have experienced
7 at Santa Ynez. Please let this serve as confirmation of our agreement to replace the current
8 field with a new surface, including previous agreed upon in-lays and logos. This
9 replacement is under the terms of your warranty agreement which was issued at the time of
10 purchase and this warranty remains in effect with its original terms.

11 We discussed the field replacement options available to Santa Ynez during my visit as well as
12 improvements that have been made to the Duraspine system. In addition to the Duraspine system
13 we have also begun producing our own fiber system called Revolution which offers the most
14 advanced resiliency and wear of any fiber available today.

15 Based on pending litigation with the manufacturer of the earlier version of Duraspine used on
16 your current field, we must revise our previous offer and options for replacement to the
17 following:

- 18 1. **Fieldturf Duraspine 2.5 inch** - Original Duraspine design but with improved polymer,
19 36 oz face weight, 3-layer 9.2 lb in-fill system, porous finger coated backing. Current
warranty remains in effect. **NO CHARGE**.
- 20 2. **Fieldturf REVOLUTION 2.5 inch** - Best Polymer, new "ridged" blade design which
21 eliminates weak points and improves resiliency, 40 oz face weight, 3-layer 9.2 lb in-fill
22 system, porous finger coated backing. New 8 year insured warranty from the date of
23 install. **\$175K UPCHARGE**.

24 Based on our previous commitments and the issues you have experienced with your current field,
25 we are offering only to Santa Ynez a further discount on the Revolution upgrade option where the
26 upgrade charge would be \$125K.

27 We will need a 4 week window in early 2012 in order to complete the work.

28 Let me know if I can provide any additional information. Please let us know of your decision as
soon as possible so that a sales agreement and field layouts can be forwarded for approvals.

29 Marty Olinger

30 Senior Vice-President, Sales

31 FIELDTURF, USA 175 N INDUSTRIAL BLVD, NE CALHOUN, GA 30701
32 (706) 625-6533 WWW.FIELDTURF.COM

33 36. On or about September 8, 2011, the District sent a letter to Mr. Olinger
34 informing FieldTurf that the District had selected the "no charge" option to have its
35 field replaced with the improved Duraspine turf product. That letter also emphasized
36 the need to have the field replaced by the end of 2011 in order not to interfere with
37 the upcoming sports schedules. Based upon FieldTurf's letter above, the District
38 believed that its field would be replaced with an improved version of the original
39 Duraspine product, which had "an improved polymer".

40 37. On or about October 26, 2011, FieldTurf sent a letter to SYHS
41 informing the school that the replacement of the field would not occur until the

1 following year, and also stated that FieldTurf would not replace the end zones or
2 center field logo, contrary to the promise to replace these sections of the field made
3 in Mr. Olinger's letter, dated June 20, 2011.

4 38. In May of 2012, FieldTurf replaced the defective field at SYHS.
5 However, FieldTurf did not replace the alternating light and dark green turf which
6 had been originally installed at five yards intervals, because FieldTurf claimed that
7 the light green colored fibers were no longer available. FieldTurf also refused to
8 replace the end zones in May of 2012. At the time FieldTurf replaced SYHS's
9 field, Tim Coury gave Mr. Fredrickson the handout below titled, 'Top 10 Reasons
10 Why FieldTurf is the Only Choice'. This handout represented, "Our spined fiber,
11 long renowned for its durability and resistance to matting, is coupled with the latest
12 in polymer technology. This patented combination delivers perfectly natural
13 characteristics and the softest, most durable fiber ever introduced." This handout
14 further represented, "Since its inception, FieldTurf has proven to be the most
15 durable and longest-lasting synthetic turf system in the marketplace having installed
16 more fields that are currently 8 years or older than all other competitor installations
17 combined." In support of this representation, this handout included a bar chart
18 identifying the number of fields in daily use which were 9 and 10 years old. This
19 handout further boasted that the cost of FieldTurf's product was less compared to a
20 grass field over a "10-year period". Based upon these representations, the District
21 believed that the replacement turf had an expected useful life of at least eight years
22 or more.

23 39. Based upon information and belief, the Duraspine turf product which
24 FieldTurf used to replace SYHS's field was not "improved" but the very same
25 Defective Product which FieldTurf had originally installed in 2006. FieldTurf
26 installed this very same defective product as the "replacement" field at SYHS just
27 two months after it sued Tencate alleging that the Duraspine turf product was
28 defective and would prematurely degrade and deteriorate. FieldTurf knew that this

1 product was defective and had failed at multiple other high schools and colleges
2 around the country. FieldTurf concealed this fact from SYHS when it replaced its
3 field with the same defective product. Instead, Mr. Olinger represented in his May
4 11, 2011 letter that the replacement options available to SHYS included
5 "improvements that have been made to the Duraspine system." Mr. Olinger's June
6 20, 2011 letter also represented that the replacement option selected by SYHS
7 included the "Original Duraspine design but with improved polymer". Based on
8 these representations, SYHS believed the replacement field did not include the
9 defective product. However, these representations were not true and FieldTurf
10 simply replaced the field in 2012 with the same defective product it installed in
11 2006. The replacement field began to deteriorate approximately two years after it
12 was installed, or in or about 2014.

13 40. The replacement turf installed by FieldTurf in 2012 was defective, has
14 prematurely failed and now must be completely removed and replaced with a non-
15 defective turf field at substantial expense to the District.

16 **ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS**

17 41. All conditions precedent for Plaintiff's claims are satisfied and
18 Plaintiff's claims are within the applicable statute of limitations for the claims
19 presented hereunder because Plaintiff did not discover the defect, and could not
20 reasonably have discovered the defect due to Defendant's concealment of material
21 facts. .

22 42. Defendants are estopped from relying on any statutes of limitation or
23 repose by virtue of their acts of concealment.

24 43. Defendants had a duty to disclose that the Defective Product was
25 defective, not durable, and inherently flawed in manufacture.

26 44. Plaintiff had no knowledge of, and no reasonable way of discovering,
27 the defects found in Defendants' Defective Product at the time they purchased the
28 product or before its replacement.

1 45. Defendants did not notify, inform, or disclose to Plaintiffs and Class
2 members that there were defects in the Defective Product prior to marketing, selling,
3 or installing the Defective Product at SYHS. Because Defendants failed in their duty
4 to notify Plaintiff that their product was defective, the statute of limitations should
5 be tolled on Plaintiff's claims.

6 46. Pursuant to the doctrine of Equitable Tolling and/or Equitable Estoppel,
7 the period for bringing claims shall not be barred due to the statute of limitations or
8 statute of repose. The interest of justice requires equitable tolling in this case. In
9 applying this doctrine the relevant factors include the claimant's diligence, the
10 claimant's knowledge of the relevant facts and whether these statements misled the
11 claimant. Accordingly, with respect to each and every cause of action and/or Count
12 asserted herein, Plaintiff expressly pleads Equitable Tolling and/or Equitable
13 Estoppel and their application thereto.

FIRST CAUSE OF ACTION

**(Breach of Third Party Beneficiary Contract by Plaintiff Against
Defendant FieldTurf USA, Inc.)**

17 47. Plaintiff repeats and re-alleges each and every allegation contained in
18 preceding paragraphs as if fully set forth herein.

19 48. The Granite Subcontract identified the District as an intended
20 beneficiary of the obligations, liabilities and responsibilities FieldTurf undertook on
21 the Project. As an example, as part of the Granite Subcontract, FieldTurf warranted
22 to the District that its work on the Project would be performed in a skillful, good and
23 workmanlike manner and be fit for its intended purpose as to both workmanship and
24 materials. Additionally, as part of the Granite Subcontract, FieldTurf agreed defend
25 and indemnify and save harmless the District from any and all claims, debts,
26 demands, damages, consequential damages, liabilities, actual attorney's fees, costs
27 and expenses of whatever kind or nature arising out of FieldTurf's work or failure to
28 perform the terms of the subcontract. FieldTurf also agreed to provide the District

1 with an 8 year, pre-paid, third party insured warranty for the turf field it installed on
2 the Project.

3 49. The District was the intended beneficiary of the aforementioned
4 promises contained in the Granite Subcontract, which was made expressly for the
5 benefit of the District as part of the construction of the Project.

6 50. As part of the Granite Subcontract, FieldTurf issued a written warranty
7 to the District, which provided in relevant part:

8 9 "FieldTurf USA warrants that if FieldTurf FTOM 1F for
10 football/soccer synthetic turf proves to be defective in material or
11 workmanship, resulting in premature wear, during normal and ordinary
12 use of the Product for the sporting activities set out below or for any
13 other uses for which FieldTurf gives its written authorization, within 8
14 years from the date of completion of installation, FieldTurf will, at
15 FieldTurf's option, either repair or replace the affected area without
16 charge, to the extent required to meet the warranty period (but no cash
17 refunds will be made)."

18 51. The written warranty formed the basis of the bargain between FieldTurf
19 and the District at the time of sale of the Defective Product.

20 52. Defendant, FieldTurf USA, Inc. breached the aforementioned duties by
21 (1) failing to furnish and install an artificial turf sports field that was free from
22 defects in workmanship and materials; (2) the artificial turf was not fit for its
23 intended purpose; (3) failing to indemnify the District from all debts, damages and
24 expenses arising from its work; and (4) failing to honor its written warranty.

25 53. Plaintiff has not yet completed its investigation of all of the problems
26 that may exist with respect to FieldTurf's product and will amend this Complaint at
27 such time as the exact sum becomes certain, or will conform to proof at the time of
28 trial if additional damages are discovered. Such breaches have proximately caused
damage to the artificial turf football field at SYHS.

29 54. As a direct and proximate result of the breaches by Defendant, Plaintiff
30 has suffered damage to its real property, loss of use of its football and soccer field,
31 costs to investigate these damages, costs to replace the defective field, attorneys'
32 fees and other economic and special damages all in an amount of at least \$500,000.

1 Because Plaintiff's damages are continuous and progressive over time, Plaintiff will
2 seek leave to amend its Complaint at such time as the exact amount of its damages
3 become certain, or will conform to proof at the time of trial.

4 **SECOND CAUSE OF ACTION**

5 **(Breach of Implied Warranties By Plaintiff Against All Defendants)**

6 55. Plaintiff repeats and re-alleges each and every allegation contained in
7 the preceding paragraphs as if fully set forth herein.

8 56. Pursuant to California Commercial Code § 2314(1), by placing their
9 product into the stream of commerce, Defendants impliedly warranted that their
10 Duraspine product was merchantable, fit for its intended purpose and suitable for
11 use as an artificial turf sports field.

12 57. Further, at the time of installing the turf field at SYHS, FieldTurf had
13 reason to know that its Duraspine product would be used as a football and soccer
14 field at SYHS and that the District was relying upon FieldTurf's skill and judgment
15 to furnish suitable products for this particular purpose. Pursuant to California
16 Commercial Code § 2315, FieldTurf impliedly warranted that its Duraspine artificial
17 turf product was fit for this particular purpose.

18 58. Defendants' artificial turf is not merchantable. In breach of the implied
19 warranties of merchantability and fitness for a particular purpose, the artificial turf
20 field is defective because it physically and chemically degraded prematurely during
21 the first three years for the original field, and in the first 2 years for the replacement
22 field.

23 59. The artificial turf field was defective when it was sold and installed by
24 Defendants.

25 60. The defects in the artificial turf were not open and/or obvious to
26 Plaintiff at the time the field was installed by FieldTurf.

27 61. Any purported disclaimer or limitation of the duration and scope of the
28 implied warranty of merchantability given by Defendants is ineffective, not

1 conspicuous, unreasonable, unconscionable and void, because Defendants knew or
2 recklessly disregarded that the defects in its artificial turf fields existed and might
3 not be discovered, if at all, until the field had been used for a period of time, and
4 Defendants willfully withheld information about the defects from Plaintiffs.

5 62. Defendants received notice that its product was not merchantable by
6 requests by SYHS to repair and/or replace the defective artificial turf field as alleged
7 in paragraphs 34 through 39 above. Additionally, Defendants knew that its product
8 was defective based upon the internal emails and correspondence to its supplier
9 alleged at paragraphs 18 through 27 above, and its own product testing as alleged in
10 the Tencate Action.

11 63. As a direct and proximate result of Defendants' breach of its implied
12 warranties, Plaintiff has been damaged in, *inter alia*, the amount it paid to purchase
13 and replace Defendants' un-merchantable artificial turf field.

THIRD CAUSE OF ACTION

(Violation of the Unfair Competition Law, Business & Professions Code § 17200, *et seq.*, By Plaintiff Against All Defendants)

17 64. Plaintiff repeats and re-alleges each and every allegation contained in
18 the preceding paragraphs as if fully set forth herein.

19 65. The acts, omissions, and practices of Defendants as alleged herein
20 constituted, and continue to constitute, unlawful and unfair business acts and
21 practices within the meaning of Section 17200 *et seq.* of the California *Business &*
22 *Professions Code*. Plaintiff has standing to bring this action under *Business &*
23 *Professions Code* § 17200 because it has suffered an injury-in-fact and lost money
24 because of Defendants' conduct.

25 66. Defendants have engaged in "unlawful" business acts and practices by
26 their violation of the statutes and regulations referenced above, including, but not
27 limited to: California *Business & Professions Code* § 17200 *et seq.*; California
28

1 *Business & Professions Code* § 17500 *et seq.*; and California common law that
2 prohibits fraudulent concealment and breaches of implied warranty.

3 67. Defendants have also engaged in “unfair” business acts or practices in
4 that the harm caused by Defendants’ manufacture, supply, installation, and or
5 control of its product outweighs the utility of such conduct, and the conduct offends
6 public policy, is immoral, unscrupulous, unethical, deceitful and offensive, caused
7 substantial injury to Plaintiff and similar consumers, and provides Defendants with
8 an unfair competitive advantage over those companies that abide by the law.

9 68. Defendants’ actions described herein constitute fraud within the
10 meaning of California *Business and Professions Code* § 17200, *et seq.*, in that
11 Defendants have failed to disclose that their products contain the defects set forth in
12 the internal emails and correspondence alleged herein at paragraphs 18 through 27,
13 and as admitted in the Tencate Action. Defendants’ failure to disclose these defects
14 was likely to mislead Plaintiff and similar consumers into believing that the products
15 were free from defects and safe to use.

16 69. As a result of the conduct described above, Defendants have been and
17 will be unjustly enriched at the expense of Plaintiff and similar consumers.

18 70. The aforementioned unlawful or unfair business acts or practices
19 conducted by Defendants have been committed in the past and continue to this day.
20 Defendants have failed to acknowledge the wrongful nature of their actions.
21 Defendants have not corrected or publicly issued individual and comprehensive
22 notices to Plaintiff and other users of their products or provided full restitution and
23 disgorgement of all ill-gotten monies either acquired or retained by Defendants as a
24 result thereof, thereby depriving Plaintiff and other users of Defendants' products of
25 artificial turf that is not merchantable or fit for its intended use.

26 71. Pursuant to *Business & Professions Code* § 17203, Plaintiff seeks an
27 order of this Court requiring Defendants to disgorge all ill-gotten gains and
28 awarding Plaintiff full restitution of all monies wrongfully acquired by Defendants

1 by means of such “unlawful” and “unfair” conduct, plus interest and attorneys’ fees
2 pursuant to, inter alia, California *Code of Civil Procedure* § 1021.5, so as to restore
3 any and all monies to Plaintiff which were acquired and obtained by means of such
4 “unlawful” and “unfair” conduct, and which ill-gotten gains are still retained by
5 Defendants. Plaintiff additionally requests that such funds be impounded by the
6 Court or that an asset freeze or constructive trust be imposed upon such monies by
7 Defendants. Plaintiff and other users of Defendants' products may be irreparably
8 harmed and/or denied an effective and complete remedy if such an order is not
9 granted.

10 **FOURTH CAUSE OF ACTION**

11 **(Violation of the False Advertising Law, Business & Professions Code § 17500,
12 *et seq.*, By Plaintiff Against All Defendants)**

13 72. Plaintiff repeats and re-alleges each and every allegation contained in
14 the preceding paragraph as if fully set forth herein.

15 73. California *Business & Professions Code* § 17500 prohibits various
16 deceptive practices in connection with the dissemination in any manner of
17 representations that are likely to deceive members of the public to purchase products
18 such as Defendants' artificial turf.

19 74. Defendants caused advertisements for their products to be placed in
20 their marketing materials, on their website and in trade publications among other
21 sources, before the general public and knew or should have known that their
22 products did not conform to the advertisements' representations regarding the
23 merchantability of their products.

24 75. As a result of the foregoing, Plaintiff and other consumers are entitled
25 to injunctive and equitable relief and damages in an amount to be proven at trial.

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FIFTH CAUSE OF ACTION

(Fraudulent Concealment By Plaintiff Against All Defendants)

76. Plaintiff repeats and re-alleges each and every allegation contained in preceding paragraphs as if fully set forth herein.

5 77. In order to induce the District to select the Duraspine product,
6 Defendants represented to Ken Fredrickson in 2006 that its Duraspine turf had an
7 expected life of 10+ years, which was consistent with FieldTurf's advertisements of
8 "offers INCREASED PRODUCT LIFE", "the fact remains that the new FieldTurf
9 system will last longer", "This added longevity will actually allow the District to
10 amortize the life of the field on a 10+ year basis rather than the 8+ year life
11 expectancy." Plaintiff is informed and believes that FieldTurf instructed its
12 salespersons to tell customers that the Duraspine turf product had an expected useful
13 life of 10+ years.

14 78. Further, Martin Olinger represented in his May 11, 2011 letter to SYHS
15 that the replacement options available to SHYS included "improvements that have
16 been made to the Duraspine system." Mr. Olinger's June 20, 2011 letter also
17 represented to SYHS that the replacement option selected by SYHS included the
18 "Original Duraspine design but with improved polymer".

19 79. Plaintiff is informed and believes that Defendants knew, or recklessly
20 disregarded the fact that the Duraspine artificial turf originally installed in 2006 and
21 used as the replacement in 2012 was defective based upon the internal emails,
22 correspondence and product testing alleged in paragraphs 18 through 27 above.
23 Further, based upon their own internal investigation, Defendants knew in December
24 of 2009 that the turf installed at SYHS came from the same production lots as the
25 turf installed at Bishop Verot and Midlothian High Schools which had previously
26 failed. Defendants concealed these facts from Plaintiff when FieldTurf refused to
27 replace the entire SYHS field in 2010 and told Plaintiff that the main portion of the
28 field was not defective and did not need to be replaced.

1 80. Defendants concealed and suppressed material facts from the District
2 concerning the durability of its Duraspine artificial turf product. Defendants failed
3 to disclose their knowledge that the Duraspine monofilament fibers would
4 prematurely fade, split, break, and eventually disintegrate within a few years of use.
5 These omitted and concealed facts were material because they directly impacted the
6 useful life and durability of the product.

7 81. Alternatively, Defendants intentionally failed to disclose the fact that
8 the monofilament fibers used in the Duraspine product were defective in that they
9 were not fit for their intended use, a fact known only to Defendants. Plaintiff could
10 not have discovered this fact through the exercise of reasonable diligence. Plaintiff
11 is informed and believes that Defendants knew of the durability problems with the
12 artificial turf based upon internal emails, correspondence and testing as alleged in
13 paragraphs 18 through 27 above prior to placing the product into the stream of
14 commerce, and prior to replacing the field at SYHS in 2012 with the same defective
15 product.

16 82. Plaintiff reasonably relied upon the Defendants to sell artificial turf
17 sports fields which are merchantable. Defendants knew or ought to have known that
18 Plaintiff relied and/or would have reasonably relied upon Defendants to sell
19 artificial turf fields in which the entire lifetime of the product could be fully used
20 without prematurely becoming damaged or failing. Defendants' knowledge that its
21 product was not fit for its intended use, combined with the Defendants' knowledge
22 that Plaintiff relied upon Defendants to communicate the true durability, or lack
23 thereof, of its product creates a legal obligation on Defendants' part to disclose to
24 Plaintiff these facts. Defendants are in a superior position to know the truth about,
25 and the nature of, the durability and useful life of its artificial turf fields.

26 83. Defendants intended to deceive Plaintiff by failing to disclose that its
27 artificial turf fields are not fit for their intended purpose, will fail prematurely long
28 before the end of the eight year warranty period, and are not durable. Defendants

1 also intended to deceive Plaintiff by replacing the original turf field with the same
2 defective product months after Defendants sued Tencate for producing defective
3 fibers.

4 84. Defendants' failure to disclose these facts was material. Plaintiff would
5 not have purchased the original field in 2006 or accepted the replacement of the
6 artificial turf field in 2012 had they known that the Duraspine turf was not fit for its
7 intended use; would prematurely fail long before the end of its ten year expected
8 life, and was not durable.

9 85. Plaintiff was harmed. As a proximate result of Defendants' conduct as
10 alleged herein, Plaintiff will now be required to remove and replace the defective
11 artificial turf field.

12 86. Defendants' concealment was a substantial factor in causing Plaintiff's
13 harm.

14 87. The wrongful conduct of Defendants, as alleged herein, was willful,
15 oppressive, immoral, unethical, unscrupulous, substantially injurious, malicious,
16 and/or in conscious disregard for the wellbeing of Plaintiff. Defendants intended to
17 cause injury to the Plaintiff by placing profits over proving a higher quality product
18 which was represented to the Plaintiff. Defendants engaged and continue to engage
19 in despicable conduct with a willful and conscious disregard of the rights of others.
20 Defendants subjected, and continue to subject, Plaintiff to cruel and unjust hardship.
21 Accordingly, Plaintiff is entitled to an award of punitive damages against
22 Defendants in an amount to deter them from similar conduct in the future.

SIXTH CAUSE OF ACTION

(Declaratory Relief Against All Defendants)

25 88. Plaintiff repeats and re-alleges each and every allegation contained in
26 the preceding paragraphs as if fully set forth herein.

27 | / / /

28 | / / /

89. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties with regard to Defendants' artificial turf supplied and installed at SYHS.

4 90. A judicial declaration is necessary and appropriate at this time under
5 the circumstances in order that the parties may ascertain their rights and duties
6 herein.

SEVENTH CAUSE OF ACTION

**(For Breach of Express Warranty By Plaintiff Against Defendant
FieldTurf USA, Inc.)**

10 91. Plaintiff adopts and incorporates by reference all foregoing allegations
11 as though fully set forth herein.

12 92. Defendant FieldTurf USA, Inc. issued a written "Manufacturer's
13 Limited Warranty" to Plaintiff, which warranted that "if FieldTurf FTOM 1F for
14 football/soccer synthetic turf proves to be defective in material or workmanship,
15 resulting in premature wear, during the normal and ordinary use of the Product for
16 the sporting activities set out below or for any other uses for which FieldTurf gives
17 its written authorization, within 8 years from the date of completion of installation,
18 FieldTurf will, at FieldTurf's option, either repair or replace the affected area
19 without charge, to the extent required to meet the warranty period (but no cash
20 refunds will be made)."

93. Defendant also represented that Defendants' Duraspine turf field had an
expected useful life of at least 10 years.

23 94. These representations became the basis of the bargain when Plaintiff
24 purchased the turf field and accepted the replacement turf field.

25 95. Plaintiff relied on Defendants' express warranties and representations
26 and would not have purchased the Duraspine turf field, or accepted the replacement
27 field in 2012 if it had been disclosed that the artificial turf did not conform to
28 Defendants' express representations and warranties.

1 96. Defendants' breached their warranties by:

- 2 a. Manufacturing, selling, distributing and installing artificial turf
3 that was defective;
- 4 b. Selling, distributing and installing artificial turf which Defendants
5 knew was defective;
- 6 c. Refusing to honor the express warranty by refusing to replace the
7 defective turf field with a non-defective turf product which would
8 last the full ten year life expectancy of the product;
- 9 d. Failing to replace the end zones and centerfield logo turf areas in
10 2012, and refusing to replace the alternating light and dark green
11 color turf at five yard intervals in 2012 to match the original
12 installation in 2006;
- 13 e. Replacing the defective artificial turf field with the same defective
14 turf product in 2012, even after Defendants had sued their supplier
15 admitting that the product was defective.

16 97. Plaintiff has complied with all conditions precedent and provided
17 Defendants with adequate notice.

18 98. Defendants have failed to honor the terms of their express warranty by
19 failing to replace the defective artificial turf field at SYHS with a suitable non-
20 defective turf product which will last for the entire 10+ year expected life of the
21 product, and by failing to replace the defective turf field with the identical color and
22 design of the original field.

23 99. Any alleged limitations in the warranty are objectively and subjectively
24 unconscionable. Plaintiff had no opportunity to negotiate any terms due to
25 Defendants' superior bargaining position. Further, any alleged warranty terms are
26 one-sided due to Defendants' knowledge, and are unenforceable. Any alleged
27 disclaimers are not conspicuous, not consented to, and accordingly unenforceable.

28 100. As a direct and proximate result of Defendants' misconduct, Plaintiff
has suffered damages and continues to suffer damages, including economic damages

1 at the point of sale. Additionally, Plaintiff has either incurred or will incur economic
2 damages at the point of repair in the form of the cost of repair and/or the cost of
3 purchasing a non-defective turf field.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Defendants as to each
6 Cause of Action as follows:

- 7 1. For general and compensatory damages in an amount to be proven at
8 trial;
- 9 2. For punitive damages;
- 10 3. For costs of suit;
- 11 4. For reasonable attorneys' fees;
- 12 5. For pre-judgment and post-judgment interest;
- 13 6. For a judicial declaration of the rights and obligations of the parties;
- 14 7. For such further relief as the court may deem proper.

15 DATED: February 14, 2017 ROBERTSON & ASSOCIATES, LLP

16 */ s / Alexander Robertson, IV*

17 By: _____

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28 California;*